

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 515E.14 and 515I.15, the Insurance Division (the Division) hereby amends Chapter 21, “Requirements for Excess and Surplus Lines, Risk Retention Groups and Purchasing Groups,” Iowa Administrative Code.

Iowa Code chapter 515E regulates risk retention groups and purchasing groups, and Iowa Code chapter 515I regulates surplus lines insurance. The adopted amendments allow surplus lines insurance producers to electronically deliver to insureds, under a defined method, notices required by rule 191—21.4(515) stating that nonadmitted companies are not covered by the Iowa Insurance Guaranty Association. The amendments also update many citations and make general updates to the chapter. One of those updates includes rule 191—21.6(515E), risk retention groups, and rule 191—21.7(515E), procedures for qualification as a risk retention group, which are rescinded and replaced to amend the rules’ language and to reverse their order to provide more logical progression in the chapter. The Division’s review and changes are also in accordance with Iowa Code section 17A.2.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 3, 2016, as **ARC 2664C**. A public hearing was held on August 23, 2016, at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa, and written comments were accepted through August 23, 2016. Comments were received. The following list summarizes the changes made to the amendments in response to public comment and Division review:

1. The Division received two comments requesting the striking of revised subrule 21.2(1) because, the comments suggested, Iowa Code section 515I.3 could be interpreted to hold both surplus lines producers and insurers liable for collecting and paying premium tax for surplus lines insurance. Instead, the Division has clarified that the premium tax amount is due from insurers only if a surplus lines insurance producer fails to collect and pay the tax as required under Iowa Code section 515I.3.

2. The Division received two comments objecting to requiring an insurer to designate an Iowa resident surplus lines insurance producer to act as the person upon whom service of process can be made on behalf of the nonadmitted insurer under subparagraph 21.5(1)“b”(2). The Division modified the subparagraph to require the designation of a producer to accept inquiries and notices on behalf of the nonadmitted insurer.

The Insurance Division’s waiver provisions in 191—Chapter 4 apply to this rule making.
 These amendments will impose no fiscal impact to the State.
 After analysis and review of this rule making, no impact on jobs has been found.
 These amendments are intended to implement Iowa Code chapters 515E and 515I.
 These amendments shall become effective November 2, 2016.
 The following amendments are adopted.

ITEM 1. Amend **191—Chapter 21**, title, as follows:
 REQUIREMENTS FOR ~~EXCESS AND~~ SURPLUS LINES,
 RISK RETENTION GROUPS AND PURCHASING GROUPS

ITEM 2. Amend rule 191—21.1(515) as follows:

191—21.1(~~515~~ 515E,515I) Definitions. In addition to the definitions provided in Iowa Code chapters ~~515 and~~ 515E and 515I, the following definitions shall apply to this chapter, unless the context clearly requires otherwise:

“Division” means the Iowa insurance division, supervised by the commissioner pursuant to Iowa Code section 505.8, in the division’s performance of the duties of the commissioner under Iowa Code chapters 515E and 515I.

“Division’s Web site” means the Web site of the Iowa insurance division, www.iid.iowa.gov.

“Excess and surplus lines insurance” means surplus lines insurance.

~~“NAIC UCAA” means a National Association of Insurance Commissioners Uniform Certificate of Authority Application form.~~

~~“Nonadmitted insurer” means an insurer that is not licensed by or admitted to do business in this state.~~

~~“Place” or “places” means obtaining insurance for an insured with a specific insurer.~~

~~“Producer” means the person who places the policy with the insurance company. The producer may be either a resident or nonresident of this state and must be licensed in Iowa to sell insurance classified as excess and surplus lines.~~

~~“Qualified surplus lines carrier” means a nonadmitted insurer that the division has determined is qualified to provide surplus lines coverage as set forth in Iowa Code section 515.120, but in no event shall “qualified surplus lines carrier” include an insurer described in Iowa Code section 515.122.~~

~~“Surplus lines insurance” means insurance on a risk or a part of a risk for which there is no market available through the original insurance producer in Iowa; therefore, the risk needs to be placed with a qualified surplus lines carrier, in accordance with the provisions of Iowa Code chapter 515 and this chapter.~~

ITEM 3. Amend rule 191—21.2(515) as follows:

191—21.2(515 515I) Qualified Eligible surplus lines carriers² insurer’s duties.

21.2(1) *Insurer liable.* Where, pursuant to Iowa Code section ~~515.120~~ chapter 515I, coverage is placed with a ~~qualified~~ an eligible surplus lines carrier insurer, but the surplus lines insurance producer fails to pay to the state of Iowa the premium tax required by Iowa Code section 515I.3(2) and rule 191—21.3(515), the ~~qualified eligible surplus lines carrier insurer~~ shall be liable for the premium tax required by Iowa Code section ~~515.120~~ chapter 515I and this chapter.

21.2(2) *How premium tax quoted.* A ~~qualified~~ An eligible surplus lines carrier insurer or a broker for a ~~qualified an eligible surplus lines carrier insurer~~ is authorized to quote a premium which includes tax as is required by Iowa Code section ~~515.120~~ chapter 515I, and thereafter no additional tax amount may be charged or collected. Premium tax may be stated in the contract of insurance as a separate component of the total premium only when the premium is not based upon rates or premiums which included a premium tax component when promulgated. Any fees collected from residents of this state are considered part of the premium and thus are subject to taxation.

ITEM 4. Amend rule 191—21.3(515) as follows:

191—21.3(515 515I) Producers’ Surplus lines insurance producer’s duties.

21.3(1) *Producer Surplus lines insurance producer’s collection of tax.* A surplus lines insurance producer who places insurance in ~~qualified~~ with an eligible surplus lines carriers insurer shall collect premium tax from the ~~qualified eligible surplus lines carriers insurer~~ by withholding 1 percent of the premiums for such tax.

21.3(2) *Electronic reporting of premium tax.* A surplus lines insurance producer who places insurance with a ~~qualified an eligible surplus lines carrier insurer~~ shall file electronically the premium tax information with the division on or before March 1 for policies issued during the preceding calendar year.

21.3(3) *Annual report.* On or before March 1 of each year, every surplus lines insurance producer who has placed insurance with ~~qualified an eligible surplus lines carriers insurer~~ when the policies have been issued during the preceding calendar year shall file electronically with the division or as otherwise directed by the division a sworn report of all such business written during the preceding calendar year and shall submit the amount to cover the taxes due on ~~said~~ all such business. If no business was written during the preceding calendar year, no report is required. Failure to file an annual ~~return~~ report or pay the taxes imposed by Iowa Code section ~~515.120 et seq.,~~ chapter 515I will be deemed grounds for the revocation of a surplus lines insurance producer’s license by the ~~insurance~~ division, and failure to file an annual ~~return~~ report or pay taxes within the time requirements of this rule will subject the surplus lines insurance producer to the penalties of Iowa Code section ~~515.121~~ 515I.12.

ITEM 5. Amend rule 191—21.4(515) as follows:

191—21.4(515 515I) Producers' Surplus lines insurance producer's duty to insured; ~~evidence of coverage.~~ A surplus lines insurance producer who places coverage with a ~~qualified~~ an eligible surplus lines carrier insurer as defined ~~herein~~ in Iowa Code section 515I.2 shall deliver to the insured, within 30 days of the date the policy is issued, a notice that states the following: "This policy is issued, pursuant to Iowa Code ~~section 515.120~~ chapter 515I, by a nonadmitted company in Iowa and as such is not covered by the Iowa Insurance Guaranty Association." A surplus lines insurance producer may comply with this rule by ~~typing or stamping a verbatim copy~~ verifying disclosure of this language in a clear and conspicuous ~~place~~ position on the policy or by electronic delivery authorized by Iowa Code chapter 505B, if the method of delivery of the notice allows the division, the surplus lines insurance producer and the intended recipient to verify receipt of the specific notice.

ITEM 6. Amend rule 191—21.5(515) as follows:

191—21.5(515 515I) Procedures for qualification and renewal of a nonadmitted insurer as a ~~qualified~~ an eligible surplus lines carrier insurer.

21.5(1) *Application and procedures for initial qualification of a nonadmitted insurer as a ~~qualified~~ an eligible surplus lines carrier insurer.*

a. Any nonadmitted insurer who wishes to qualify under Iowa Code ~~section 515.120~~ chapter 515I as a ~~nonadmitted~~ an eligible surplus lines insurer shall make an application.

b. The nonadmitted insurer's application shall contain the following information, which also is listed on the division's Web site, ~~www.iid.state.ia.us~~:

(1) A completed NAIC UCAA National Association of Insurance Commissioners Uniform Certificate of Authority Application (NAIC UCAA) Expansion Application, available through the division's Web site, ~~www.iid.state.ia.us~~; or through the NAIC Web site, www.naic.org/industry.

(2) ~~A designation~~ The name of a licensed Iowa an Iowa-licensed resident insurance producer qualified to write excess and surplus lines insurance qualified in Iowa to write surplus lines insurance, whom the nonadmitted insurer is designating as the person to accept inquiries and notices on behalf of the nonadmitted insurer.

(3) Remittance of the greater of a \$100 filing fee or a retaliatory fee, and a \$500 examination fee for all new applicants.

c. In addition to the above requirements, the insurer shall:

(1) Maintain the greater of either minimum capital and surplus of \$5 million or risk-based capital pursuant to Iowa Code chapter 521E, and

(2) Have been actively in operation for at least three years without significant changes in ownership or management during the three-year period.

These financial and management requirements may be waived by the division upon a finding that the insurer will be offering coverage in a line of insurance for which there is an unavailability of capacity and an extraordinary need for coverage in this state. The division may require other information as deemed necessary.

21.5(2) *Procedures for renewal of a nonadmitted insurer as a ~~qualified~~ an eligible surplus lines carrier insurer.* A nonadmitted insurer that is not an alien insurer as defined in Iowa Code section 515.70 and that ~~met the division's requirements for becoming a qualified surplus lines carrier~~ was approved by the division as an eligible surplus lines insurer shall, by March 1 of each year following the year of qualification approval:

a. Continue to comply with paragraph 21.5(1) "c";

b. Pay a \$100 renewal fee; and

c. Submit to the division the documents and materials listed on the division's Web site, ~~www.iid.state.ia.us~~.

21.5(3) *Failure to comply.* Failure of a nonadmitted insurer to timely submit the materials required in this rule or to otherwise fail to comply with this rule shall result in the termination of the nonadmitted insurer's status as a ~~qualified~~ an eligible surplus lines carrier insurer.

ITEM 7. Rescind rules 191—21.6(515E) and 191—21.7(515E) and adopt the following new rules in lieu thereof:

191—21.6(515E) Procedures for qualification as a risk retention group.

21.6(1) Any insurer who wishes to register under Iowa Code chapter 515E as a risk retention group shall file with the division an application that contains:

a. The information required by Iowa Code section 515E.4, which also is listed on the division’s Web site; and

b. Remittance of a \$100 filing fee plus any additional retaliatory fees.

21.6(2) A risk retention group shall pay a \$100 renewal fee by March 1 of each year following the year of registration. The risk retention group shall annually provide information requested by the division for determination of continued registration.

191—21.7(515E) Risk retention groups. A risk retention group as defined in Iowa Code chapter 515E may utilize its producers to report and pay premium taxes or may pay the taxes directly. If producers are utilized, the producers shall file the premium tax information electronically with the division through the division’s Web site on or before March 1 for policies issued during the preceding calendar year.

ITEM 8. Amend paragraph **21.8(1)“a”** as follows:

a. The information set forth in Iowa Code section 515E.8, which also is listed on the division’s Web site, www.iid.state.ia.us; and

ITEM 9. Amend rule 191—21.9(515,515E) as follows:

191—21.9(~~515,515E,515I~~) Failure to comply; penalties. Failure of a producer, surplus lines insurance producer, insurer, risk retention group or purchasing group to comply with this chapter or with Iowa Code section ~~515.120, 515.121, or 515.122~~, or chapter chapters 515E and 515I may subject the producer, surplus lines insurance producer, insurer, risk retention group or purchasing group to penalties set forth in Iowa Code chapter 507B or ~~Iowa Code section 515.121, 515E or 515I.~~

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